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Wills: Specific and Demonstrative Legacies: Ademption.—The doctrine of the ademption of specific legacies by the destruction of the particular fund prior to the testator's death has in some instances played considerable havoc with the actual intention of the testator. The denominational theological school, which in the recent case of the Estate of Goodfellow¹ failed to secure its legacy by reason of the application of this rule, may perhaps be of the opinion that such a result obtained there. The view taken by the Supreme Court of California in its decision of the case, however, is not wanting of considerable support in reason as well as authority.

The testatrix, after reciting that her late father had intended to give \$20,000 toward the establishment of a theological school, and that his estate had not yet been disentangled so as to make the gift possible on the part of herself and her three co-heirs, willed that her executors should obtain \$5,000 from her share of her father's estate and place it with trustees for the purpose indicated. Long before the death of the testatrix, the estate was settled and her share paid over to her. The court held that as it was now impossible for her executors to obtain \$5,000 from her share of her father's estate the legacy was adeemed. It was contended by counsel, on the other hand, that the legacy was not specific, but demonstrative; that the testatrix intended that it should be payable at all events, and had merely designated the fund out of which it should be taken in case that fund were in existence.

From the language of the will as has so far been stated, it is difficult to find much support for counsel's contention. The will contained no words of direct bequest, but merely directed the executors to secure the sum in the manner stated. A clearer case of a specific legacy could hardly be presented.² That a portion only of the particular fund,—the father's estate,—was bequeathed, seems both by reason and authority to be immaterial.³ The distinction, however, between a specific and a demonstrative legacy, particularly in case the legacy is pecuniary, is but slight. The demonstrative legacy stands midway between the specific and the general, and in certain respects partakes of the characteristics of both.⁴ Like a specific legacy, it does not abate along with general legacies in case of a deficiency of assets. Like a general legacy, it is payable at all events, and is not adeemed by the destruction of the particular fund from which it is to be taken. The tendency of the law is to favor general as opposed to specific legacies, and where there is doubt, a bequest will be construed as general or demonstrative rather than specific.⁵

¹ (Nov. 28, 1913) 46 Cal. Dec. 433.

² Cf. *In re Tillinghast*, (1901) 23 R. I. 121, 49 Atl. 634; *Gelbach v. Shively*, (1887) 67 Md. 499, 10 Atl. 247.

³ *Ford v. Fleming*, (1728) 1 Eq. Ab. 302; *Georgia Infirmary v. Jones*, (1889) 37 Fed. 750.

⁴ 18 A. & E. Enc., 2nd ed., 721; *Page on Wills*, sec. 770; *Underhill on Wills*, p. 555.

⁵ *Estate of Goodfellow*, *supra*; 18 A. & E. Enc., 2nd ed., 715; *Page on Wills*, sec. 767; *Underhill on Wills*, p. 555, 557.

It is also essential in determining the character of a legacy to consider the general intent of the testator as disclosed from all provisions of the will, as well as the precise language of the particular bequest.⁶

In the present case, in addition to the disposition as it has been stated, the testatrix in another clause of her will directed that the legacy in question, together with another legacy which was general, should be secured by her executors first, and that then, as funds should allow, the other bequests should be paid. Is it not possible to interpret this as evincing an intention by the testatrix that the legacy to the theological school should be paid at all events, and that the direction to her executors to obtain the sum from her share of her father's estate was merely a designation of the fund from which, for reasons of sentiment, she wished the legacy to come: in other words, that the legacy was demonstrative rather than specific? If the bequest were to depend on the existence of a particular fund, why did the testatrix direct that in case there were not sufficient funds for all, this legacy should take precedence in payment over legacies which were general? A specific legacy necessarily takes priority in payment over general legacies, and does not abate in case of an insufficiency of general assets. There would seem to be but two interpretations to be put upon this direction of the testatrix. Either she did not know that a specific legacy would be entitled to priority in payment, or she intended this to be a demonstrative legacy, payable at all events, as has been stated. The possibility of this view seems not to have been considered by the court.

It must be admitted, however, that the result reached by the decision cannot be said to be contrary to the intention of the testatrix. What her real intention was must remain a matter of conjecture. Perhaps the presumption is in favor of the view that the result brought about corresponded with her actual wish. In some unfortunate instances, the rule of ademption of specific legacies has brought about a result precisely the opposite of that which the testator actually contemplated. In the case of *In re Bridle*,⁷ for example, upon the payment to him of a debt which he had specifically bequeathed, the testator banked the proceeds in a special account and gave the pass book to the legatee, saying that this would avoid the necessity of changing his will. The court nevertheless held that the legacy was adeemed by the collection of the debt. And in *Oliver v. Oliver*,⁸ where the testator had confirmed his will by a codicil after the conversion of the specific fund had taken place, the vice-chancellor in his opinion admitted, "He (the testator) clearly wished that his son should have the £2000, and it is only the doctrine of this court that says he shall not."

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⁶ *Davis v. Crandall*, (1885) 101 N. Y. 311, 4 N. E. 721; *In re Stillphen*, (1905) 100 Me. 146, 60 Atl. 888.

⁷ (1879) 4 C. P. D. 336.

⁸ (1871) L. R. 11 Eq. 506.